

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROBERT E. LEE,

Plaintiff,

CIVIL ACTION NO. 05-CV-60238-AA

vs.

DISTRICT JUDGE JOHN CORBETT O'MEARA

KARLA MCDONALD,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendant.

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**ORDER DENYING DEFENDANT'S MOTION FOR PROTECTIVE ORDER
STAYING DISCOVERY AND DENYING PLAINTIFF'S MOTION TO STRIKE**

This matter is before the Court on Defendant's Motion for a Protective Order Staying Discovery (docket no. 30) filed on July 12, 2006, and Plaintiff's Motion to Strike Defendant's Reply to Plaintiff's Brief in Opposition to Defendant's Second Motion to Dismiss (docket no. 40) filed on September 3, 2006. Plaintiff has not responded to Defendant's Motion for a Protective Order Staying Discovery. Defendant has filed a response to Plaintiff's Motion to Strike. Both motions are before the Court for ruling pursuant to 28 U.S.C. § 636(b)(1)(A). The Court finds that the facts and legal arguments are adequately presented in the parties' papers and the decisional process would not be significantly aided by oral argument. Therefore, these motions will be resolved without oral argument pursuant to E.D. Mich. LR 7.1(e)(2).

Defendant's Motion to Stay Discovery is based on her filing of her Motion to Dismiss Plaintiff's Second Amended Complaint which this Court is addressing in a Report and Recommendation contemporaneously with these motions. To the extent the Motion to Stay was requested while that motion was pending, it is now moot. The Court recommends in its Report that Defendant's Motion to Dismiss be granted on only one count of Plaintiff's Second Amended

Complaint. With regard to Defendant's Motion to Stay Discovery, the Court has recommended that Defendant's claim of qualified immunity be rejected at this stage of the proceeding. Accordingly, discovery should not be stayed in the case. Defendant's motion will therefore be denied.

Plaintiff's Motion to Strike is based on Defendant's reply brief allegedly being untimely filed and too lengthy in violation of the Court's local rules. Defendant does not dispute that the motion was not timely filed but argues that the Court has discretion to consider it especially because the brief was filed in large part to bring recently decided authority to the Court's attention. The reply brief, filed on August 25, 2006, was not timely filed within 7 days after service of the response on August 8, 2006. E.D. Mich. LR 7.1(d)(1)(B). However, its main objective was to bring to the Court's attention a Sixth Circuit decision issued after Defendant had filed her Motion to Dismiss. The filing of such notices of supplemental authority has precedent in this district. *See In re CMS Energy ERISA Litigation*, 312 F.Supp.2d 898, 903 n.3 (E.D. Mich. 2004). Accordingly, the Court will deny the Motion to Strike but consider the brief only as a notice of supplemental authority.

IT IS THEREFORE ORDERED that Defendant's Motion for Protective Order to Stay Discovery (docket no. 30) be DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Strike Defendant's Reply to Plaintiff's Brief in Opposition to Defendant's Second Motion to Dismiss (docket no. 40) be DENIED.

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: March 03, 2008

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Robert E. Lee and Counsel of Record on this date.

Dated: March 03, 2008

s/ Lisa C. Bartlett
Courtroom Deputy